

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER 

DATE: JUNE 30, 2010

AGENDA ITEM E-1

JULY 7, 2010

REVIEW PG&E SAVINGS BY DESIGN PROGRAM FOR WATERLINE INTERTIE PROJECT

ITEM

Review PG&E Savings by Design Program For the Waterline Intertie Project [PROVIDE DIRECTION TO STAFF].

BACKGROUND

PG&E has a rebate program, named Savings by Design, to reward Non-Residential New Construction for inclusion of energy savings features in a project design. In August 2009, the Board authorized staff to submit an application for the rebate program for the Waterline Intertie Project. The consultant cost to prepare the application was \$4164. Submittal of the application was expected to result in a substantial rebate from PG&E that would more than pay for the cost of processing the application.

Attached is the executive summary of the report prepared by PG&E's consultant in response to the District's application. Based on the report, the District is eligible for a one-time incentive of \$9272 if the District uses premium efficiency motors and Variable Frequency Drives (VFD) for the pump station that will be located near Joshua and Orchard. In order to receive the incentive, the District needs to sign the attached agreement and provide the required documentation after the pump station is completed.

AECOM's design already includes the use of premium efficiency motors and VFD's for pump control. The premium efficiency motors will provide the District with lower energy costs compared to regular efficiency motors over the life of the project and the VFD's will provide the required ability to vary flow from the pump station based on demand.

Given the cost to apply for the PG&E rebate program, the potential maximum incentive the District is eligible for, and the potential consultant costs the District could incur to comply with the rebate agreement, estimated to be at least as much as the initial application costs, moving forward with the rebate program does not appear to be cost-effective .

Staff presented this issue to the Supplemental Water Project Committee on May 24, 2010. The committee approved a motion to not pursue the program further and directed staff to bring the item to the full Board for consideration.

RECOMMENDATION

Staff recommends that your Honorable Board receive staff's presentation, ask questions as appropriate and provide direction to staff on whether or not to proceed with the PG&E Rebate Program process.

ATTACHMENTS

- PG&E SAVINGS BY DESIGN EXECUTIVE SUMMARY DATED MARCH 11, 2010
- PG&E REBATE AGREEMENT

1.0 Executive Summary

The Nonresidential New Construction Program (NRNC) is managed by the California investor-owned utilities, including Pacific Gas and Electric Company (PG&E). The NRNC program offers monetary incentives to energy consumers for the implementation of Energy Efficient Measures (EEM) when designing operating systems. Incentive amounts are based on the calculated improvement in energy efficiency of EEM designs relative to a baseline design. Incentives are paid after an independent Post-installation Field Inspection (PFI) verifies the implementation of the EEMs. The final incentive amount is determined after the engineer performing the PFI verifies what was installed. The final incentive may vary from the initial estimate if there are differences in the installed operating systems when compared to the initial EEM design.

This project proposes the installation of pipelines, a water storage tank, a pumping station, and water treatment facilities at the Nipomo Mesa Management Area (NMMA) of the Santa Maria Groundwater Basin. The primary EEMs are variable frequency drive (VFD) control rather than throttling valve control, and premium efficiency motors rather than energy efficient motors, for the four 100 horsepower water distribution pumps (three running, one spare) to be installed.

The calculated energy savings and increased capital cost required to achieve the EEMs are summarized below and documented herein.

Table 1. Estimated Energy Savings and NRNC Incentive

Annual Energy Savings (kWh/yr)	91,425
Demand Savings (kW)	10.447
Incremental Cost to Implement EEM	\$93,000
Annual Avoidance of Energy Cost (\$0.13/kWh)	\$11,885
NRNC Incentive (\$0.09/kWh + \$100/kW)	\$9,272

Nonresidential New Construction Program
(Formerly Savings by Design Program)

CEE Incentive Analysis and Report
For
Nipomo CSD Waterline Intertie Project

Final Report

NRNC Project No. 100826
Cannon Project No. 080703.W01

Prepared for



Pacific Gas and Electric Company
Customer Energy Efficiency Program
Pacific Gas and Electric
245 Market Street
San Francisco, CA 94105

Prepared By



March 11, 2010

- Furthermore, Owner understands that PG&E makes no representations and warranties as to proper installation, product endorsement, technical feasibility, operational capability, and/or reliability of equipment for which incentives are paid. Owner agrees not to make any such representations and warranties to third parties and agrees to indemnify PG&E, in the event said representation and warranties are made to third parties. Owner further acknowledges that any incentive paid is funded through Public Goods Charges from California ratepayers and that said incentives are intended for the benefit of customers of California utilities.
- Owner consents to PG&E's assignment of all Utility rights, duties, and obligations under this Agreement ("Duties") to the CPUC or its designee. Such assignment shall relieve PG&E of all Duties arising under this Agreement. Other than such assignment by PG&E, neither Party shall assign its right or delegate its duties without the prior written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Consent to assignment shall not be unreasonably withheld. If an assignment is requested, the Owner may be required to provide additional information if requested by PG&E.
- Owner agrees that PG&E will receive the energy benefit for which the Owner incentive is paid, for a period of not less than five years or the rated life of the equipment if that is less than five years. Owner agrees that if 1) Owner does not provide PG&E with 100 percent of the related benefits specified in the application, for a period of five years from the receipt of the incentive, or 2) the energy benefit to PG&E ceases (for example, if Owner's company stops using the equipment or no longer pays the Public Goods Charge (PGC), Owner will return to PG&E the prorated portion of the Owner Incentive dollars based on the actual period of time for which Owner provided the energy benefit. Additionally, if Owner sells the project site, Owner agrees to assign the terms and conditions of this Agreement to the new owner as part of the sale transaction for the remaining period of performance.

CANCELLATION OF AGREEMENT

PG&E may suspend or terminate the Agreement, without cause, upon written notice to Owner.

TAX LIABILITY:

Incentives may be taxable and will be reported by PG&E to the IRS unless Owner qualifies for an exempt status. PG&E will report the incentive as income to Owner on IRS Form 1099 unless Owner has established that Owner qualifies for an exempt tax status as indicated on this Agreement. Owner is urged to consult a tax advisor concerning the taxability of incentives. PG&E is not responsible for any taxes that may be imposed due to incentive payments.

PG&E MAKES NO WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES REGARDING THE DESIGN, CONSTRUCTION, EQUIPMENT, OR INSTALLATIONS REFERRED TO HEREIN, OR THE BENEFITS TO BE DERIVED FROM THE INSTALLATION, OPERATION, AND USE OF SUCH EQUIPMENT, OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR APPLICATION. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF PG&E HAS AUTHORITY TO BIND PG&E TO ANY AFFIRMATION, REPRESENTATION, OR WARRANTY UNLESS EXPRESSLY MADE AND AGREED TO IN WRITING BY PG&E.

By execution of this Agreement, Owner certifies that Owner meets all the program eligibility requirements and that the information supplied on this Agreement is true and correct. Owner certifies that Owner has read and understands the Program Documents and agrees to abide by Program rules and requirements set forth in the Program Documents. To be valid, this Agreement must be signed by all parties prior to December 31, 2010.

In witness whereof, the parties have executed this Agreement as of the date last set forth below.

NIPOMO COMMUNITY SERVICES DISTRICT

PACIFIC GAS AND ELECTRIC COMPANY

SIGNATURE

Bruce Buel

OWNER'S REPRESENTATIVE

General Manager

TITLE

DATE

SIGNATURE

PG&E REPRESENTATIVE

Program Manager, Non-Residential New
Construction

TITLE

DATE

TERMS AND CONDITIONS:

This Agreement is entered into by Pacific Gas and Electric Company (hereafter referred to as "PG&E") and the Owner (as indicated herein). This Agreement is a one-time offer to provide design assistance and a financial incentive to the Owner for participation in the Savings By Design Program ("Program") pursuant to the terms and conditions outlined herein and in the Savings By Design Program Documents ("Program Documents"). The Program Documents are incorporated into this Agreement by reference and include the 1) Savings By Design brochure, and the 2) 2010 Savings By Design Participant Handbook, which have been provided to the Owner. Funding approved for this Program is limited and will be paid on a first-come, first-served basis to qualified applicants. **Funds will only be reserved upon PG&E's execution of this Agreement.** This incentive offer is subject to the availability of authorized funds. This Agreement is valid for forty-eight (48) months from the date PG&E executes this Agreement. PG&E will deliver an executed copy of this Agreement to the Owner after acceptance and execution by PG&E. PG&E reserves the right to modify or cancel the incentive offer if the actual system(s) installed differs from the proposed installation. PG&E reserves the right to modify or discontinue this Program without prior notice at its discretion, or by order of the California Public Utilities Commission ("CPUC"). Payment of the incentives shall be made to the Owner only after all program requirements are met and upon verification of installation by a PG&E Savings By Design Program Representative.

ELIGIBILITY:

- To be eligible for incentives under this Program, Owner's project must be nonresidential new construction or renovation/remodel located within PG&E's service territory.
- Owner must install the energy-efficient equipment or system(s) specified in the "Proposed Design and Incentive Estimate" section of this Agreement (the "Proposed Design") which at minimum exceeds Title 24 standards or a generally-accepted industry standard for energy efficiency.
- Installation of any energy-efficient equipment required for compliance with Title 24 will not qualify for incentives under this Program.
- Energy savings, and incentives based on those savings, will be based on energy efficiency improvements beyond the minimum, currently in effect, Title 24 requirements, where applicable.
- Specific restrictions apply to each energy efficiency system, as outlined in the Program Documents.
- To be eligible for incentives under this Program, Owner agrees that Owner will not apply for or receive incentives offered by local or state entities or other utilities for measures covered under this Agreement.
- Incentive Limitations: The CPUC energy efficiency targets established for PG&E and the other investor-owned utilities ("IOUs") in California are based on the amount of energy that the IOUs deliver, excluding load served by non-IOU sources or suppliers (except Direct Access customers). Based on this statewide policy, PG&E may limit the incentive amount that Owner is eligible to receive for this project if the projected savings exceed PG&E energy deliveries to the project.

OWNER AGREES TO:

- Install and operate the Proposed Design in accordance with applicable laws, safety standards, and existing governmental regulations or orders.
- Provide PG&E with Title 24 compliance documentation plus any other documentation needed to establish the performance of systems selected. Owner agrees to provide PG&E with all documentation necessary for verification of installation and performance of energy efficient systems qualifying for incentives.
- Provide manufacturer's specification sheets to PG&E prior to the payment of the incentive. Also, upon request, Owner agrees to submit vendor and/or contractor invoice(s) to verify that incentive payments will not exceed 50 percent of the incremental costs of System Approach projects or 75 percent of the incremental costs of Title 24 projects associated with the purchase/installation of the energy efficient technologies.
- Accept as final authority, PG&E's determination of the incentive amount.
- Allow PG&E and CPUC representatives' reasonable access to Owner's project site to inspect and verify installation and operation. Owner understands that said inspection and verification is not an electrical safety inspection.
- Participate in a measurement and evaluation study, if selected. These studies are used to analyze current program performance and improve future program designs. Owner agrees to fully cooperate with the study team if asked to participate.
- Owner shall indemnify, defend, and hold harmless PG&E, its affiliates, subsidiaries, parent company, officers, directors, agents, and employees from and against all claims, losses, damages, costs, expenses, and liability arising from 1) injury to persons or property, 2) death, 3) violation of any law or regulation (including those that establish strict liability); so long as such injury, violation, or strict liability is caused by or in any way connected with Owner's performance of this Agreement. Owner shall, at Utility request, provide a defense against any claim covered by this indemnity.
- In no instance shall PG&E be liable for any incidental, special, or consequential damages as a result of this Agreement.



2010 SAVINGS BY DESIGN - OWNER AGREEMENT

Owner Information

Nipomo Community Services District
 OWNER NAME
 P.O. Box 326
 ADDRESS
 Bruce Buel
 CONTACT NAME
 (805) 929-1133 (805) 929-1932
 PHONE NO. FAX NO.
 Tax ID on file with PG&E
 FEDERAL TAX ID OR SOCIAL SECURITY NUMBER

AGREEMENT NUMBER 100826 / NC0098353
 (For Program Administration use only)
 Nipomo, CA 93444
 CITY/STATE ZIP CODE
 General Manager
 TITLE
 BBuel@nipomocsd.com
 E-MAIL
 TAX STATUS: ☐ Corp. ☐ Non-Corp.
☒ Exempt ☐ Individual EXEMPT REASON

Project Information

Nipomo Community Services District – Waterline Intertie
 PROJECT NAME/LOCATION
 North Santa Maria Nipomo, CA
 ADDRESS CITY/STATE ZIP CODE
 March, 2011
 EST. CONSTRUCTION COMPLETION DATE

BUILDING TYPE CODE GROSS SQ. FT. CONDITIONED SQ. FT. SIC/NAICS

ENERGY CALCULATION METHOD:

- ☒ Systems Approach
☐ Whole Building Approach

ATTACHED DOCUMENTATION:

- ☐ CaNCalc Report
☐ WBA Report
☒ Engineering Calcs

PROJECT TYPE:

- ☒ New Construction
☐ Renovation/Remodel

Proposed Design Energy Savings Estimate

CODE	DESCRIPTION	kW	kWh	Therms	\$ Amount
	Systems Incentive				
201	Daylighting Systems				
203	Interior Lighting Systems				
204	HVAC Systems				
206	Supermarket Refrigeration Systems				
207	Service Hot Water Systems				
208	Exterior Lighting Systems				
209	Other Systems	10.5	91,425	0	\$9,272.00
	<i>TOTALS</i>	10.5	91,425	0	\$9,272.00
	Whole Building				
102	Overall Building Performance				
209	Other Systems / Processes				
	<i>TOTALS</i>				

Estimated Incentive:

\$ 9,272.00

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER



DATE: JULY 1, 2007

**AGENDA ITEM
E-2**

JULY 7, 2010

REVIEW SENATE BILL 972

ITEM

Review Senate Bill (SB) 972, regarding indemnity clauses in design professional contracts [REVIEW AND PROVIDE DIRECTION TO STAFF].

BACKGROUND

The California Special Districts Association (CSDA) has prepared a press release regarding Senate Bill No. 972. As set forth in CSDA's Press Release, SB 972 would shift liability costs from design professional to the public agencies by replacing the existing negotiated indemnity contract process with a new fixed scheme. SB 972 seeks to go beyond protections that design professionals have already achieved via Assembly Bill 573 (Wolk) in 2006. It would create a carve-out for these individuals that no other professional enjoy and would lead to increased conflict and litigation.

The bill passed in the Senate and the Assembly Committee on Judiciary with little opposition.

FISCAL IMPACT

It is unknown at this time what the full impact this legislation will have on the District's financial obligations. Future design professional contracts and amendments to existing contracts may result in substantial costs to the District in the event there is a liability claim related to the negligence of the design professional.

RECOMMENDATION

Staff recommends that your Honorable Board receive staff's presentation, ask questions as appropriate and provide direction to staff regarding SB 972. A sample letter is attached should the Board wish to submit a response to legislative representatives.

ATTACHMENTS

- CSDA Press Release
- Senate Bill No. 972
- Sample Letter



FLOOR ALERT

SB 972 (Wolk)—Oppose Senate Floor vote

The California Association of Joint Powers Authorities, California Special Districts Association, California State Association of Counties, League of California Cities and Regional Council of Rural Counties oppose Senate Bill 972 by Senator Lois Wolk.

SB 972 would limit local agencies' ability to contract and, in effect, transfer responsibility and risk from design professionals to the public. This legislation will place new unnecessary litigation costs upon public entities, even when the public entity is not so much as passively negligent. In addition to these overarching concerns, we would like to highlight the following points:

- This legislation seeks to reverse a unanimous California State Supreme Court decision, *Crawford v Weather Shield*, on an indemnification statute that has not been changed since 1872. There exists a significant body of case law that is consistent with this Supreme Court decision.
- This bill would impose a "one-size-fits-all" solution to contractual negotiations by specifying that the only defense obligation a public agency can agree to with a design professional is one in which the public agency does not get an up-front defense from the design professional, but has to rely on reimbursement of its own defense costs incurred, and then only in the amount of a "reasonable allocated share."
- If passed, SB 972 would allow design professionals to shift up-front defense costs to the public, even in situations where the design professional is 100% responsible. The public agency would then have to invoice the design professional and hope for reimbursement of their "reasonable allocated share" of the costs.
- Under SB 972, what happens when the design professional disagrees with the public agency's determination of their "reasonable allocated share?" Likely, the design professional will dispute the public entity's determination of what is reasonable. This will force the public entity to pay all the costs of its defense and the design professional will not accept any responsibility for those costs during the litigation process contending that it was not negligent. In turn, the public entity must wait for the ultimate decision in the trial court before cost-sharing can be determined. This will increase the costs of litigation and could leave taxpayers holding the bag.
- The new framework mandated by SB 972 leaves open the prospect that the public entity will have to engage separate legal counsel to defend certain claims, even if the design professional accepts the tender claim of defense. This will complicate such litigation and lead to unnecessary expense. A side-effect of this legislation could even leave the public entity adverse to both the contractor and the design professional in the litigation.
- Parties to a contract should be afforded the freedom to allocate responsibilities as they see fit. Public agencies purposely contract for certain projects that they do not have the expertise to construct. In such situations, where the agency is relying upon the expertise of the design professional, it seems most appropriate that the agency may wish to seek protection for legal defense associated with the project in order to shield taxpayers from those costs.

In summary, SB 972 would result in taxpayer dollars funding litigation when the public should not be involved.

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 972

Introduced by Senator Wolk

February 8, 2010

An act to ~~add Section 2782.85 to~~ amend Sections 2778 and 2782.8 of the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

SB 972, as amended, Wolk. Indemnity: design professionals.

Existing law *contains specified rules that are to be applied in the interpretation of a contract for indemnity. Pursuant to these rules, the person that is required to provide indemnification is bound, upon the request of the person that is required to be indemnified, to defend actions or proceedings brought against the person that is required to be indemnified prior to a finding of liability.* Existing law further provides, for all contracts, and amendments to contracts, entered into on or after January 1, 2007, with a public agency for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting these contracts, that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

This bill would provide, for all contracts, and amendments to contracts, entered into on or after January 1, 2011, with a public agency, as defined, for design professional services, all provisions, clauses,

covenants, and agreements contained in, collateral to, or affecting these contracts or amendments to contracts that purport to require an immediate defense under an indemnity agreement are unenforceable. The bill would provide that a design professional is not required to defend or indemnify the indemnified party unless and until the indemnified party provides a written tender of the claim to the design professional, at which point the design professional may choose to either defend the claim with counsel of its choosing or pay a reasonable allocated share of the indemnified party's defense fees and costs. The bill would allow the indemnified party to recover damages from the design professional if it fails to timely and adequately perform these duties. *This bill would provide that the obligations of a design professional to indemnify a public agency for damages determined to be caused by negligence, recklessness, or willful misconduct to be proportionate to the actual liability of the design professional. This bill would provide that if a public agency includes indemnity language in a contract for the services of a design professional, those provisions shall only be enforceable if the language of the contract is in conformance with these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2778 of the Civil Code is amended to
2 read:

3 2778. In the interpretation of a contract of indemnity, the
4 following rules are to be applied, unless a contrary intention
5 appears:

6 1.—

7 (a) Upon ~~an~~ a finding of indemnity against liability, expressly,
8 or in other equivalent terms, the person *that is to be* indemnified
9 is entitled to recover upon becoming liable;

10 2.—

11 (b) Upon ~~an~~ a finding of indemnity against claims, ~~or~~ demands,
12 ~~or~~ damages, or costs, expressly, or in other equivalent terms, the
13 person *that is to be* indemnified is not entitled to recover, without
14 payment ~~thereof~~; of the underlying claims, demands, damages, or
15 costs.

16 3.—

1 (c) An indemnity action or proceeding against claims, ~~or~~
2 demands, or liability, expressly, or in other equivalent terms,
3 embraces the costs of defense against ~~such~~ the claims, demands,
4 or liability incurred in good faith, and in the exercise of a
5 reasonable discretion.

6 4.—

7 (d) The person *that is responsible* for indemnifying is bound,
8 on request of the person *that is to be* indemnified, to defend actions
9 or proceedings brought against the ~~latter~~ person *that is to be*
10 *indemnified* in respect to the matters embraced by the indemnity
11 contract, but the person *that is to be* indemnified has the right to
12 conduct ~~such~~ those defenses, if he or she chooses to do so. *This*
13 *subdivision does not apply to contracts for design professional*
14 *services, as defined in Section 2782.8.*

15 5.—

16 (e) If, after a request for indemnification, the person responsible
17 for indemnifying neglects to defend the person *that is to be*
18 indemnified, a recovery against the ~~latter~~ person *that is to be*
19 *indemnified* suffered by him in good faith, is conclusive ~~in his favor~~
20 against the ~~former~~ person *that is responsible* for indemnification.

21 6.—

22 (f) If the person ~~indemnifying~~ *that is responsible* for
23 indemnification, whether ~~he is~~ a principal or a surety in the
24 agreement, has not received reasonable notice of the action or
25 proceeding against the person *that is to be* indemnified, or is not
26 allowed to control its defense, judgment against the ~~latter~~ person
27 *that is to be indemnified* is only presumptive evidence against the
28 ~~former~~ person *that is responsible* for indemnification.

29 7.—

30 (g) A stipulation that a judgment against the person indemnified
31 shall be conclusive upon the person indemnifying, is inapplicable
32 if he or she had a good defense upon the merits, which by want of
33 ordinary care he or she failed to establish in the action.

34 SEC. 2. Section 2782.8 of the Civil Code is amended to read:

35 2782.8. (a) For all contracts, and amendments thereto, entered
36 into on or after January 1, 2007, with a public agency for design
37 professional services, all provisions, clauses, covenants, and
38 agreements contained in, collateral to, or affecting any such
39 contract, and amendments thereto, that purport to indemnify,
40 including the cost and duty to defend, the public agency by a design

1 professional against liability for claims against the public agency,
2 are unenforceable, except for claims that arise out of, pertain to,
3 or relate to are caused by the negligence, recklessness, or willful
4 misconduct of the design professional. This section shall not be
5 waived or modified by contractual agreement, act, or omission of
6 the parties. Contractual provisions, clauses, covenants, or
7 agreements not expressly prohibited herein are reserved to the
8 agreement of the parties.

9 (b) For purposes of this section, the following definitions apply:

10 (1) "Public agency" includes any county, city, city and county,
11 district, school district, public authority, municipal corporation,
12 or other political subdivision, joint powers authority, or public
13 corporation in the state. Public agency does not include the State
14 of California.

15 (2) "Design professional" includes all of the following:

16 (A) An individual licensed as an architect pursuant to Chapter
17 3 (commencing with Section 5500) of Division 3 of the Business
18 and Professions Code, and a business entity offering architectural
19 services in accordance with that chapter.

20 (B) An individual licensed as a landscape architect pursuant to
21 Chapter 3.5 (commencing with Section 5615) of Division 3 of the
22 Business and Professions Code, and a business entity offering
23 landscape architectural services in accordance with that chapter.

24 (C) An individual registered as a professional engineer pursuant
25 to Chapter 7 (commencing with Section 6700) of Division 3 of
26 the Business and Professions Code, and a business entity offering
27 professional engineering services in accordance with that chapter.

28 (D) An individual licensed as a professional land surveyor
29 pursuant to Chapter 15 (commencing with Section 8700) of
30 Division 3 of the Business and Professions Code, and a business
31 entity offering professional land surveying services in accordance
32 with that chapter.

33 (c) *A design professional that enters into a contract, which is*
34 *subject to this section, that contains an indemnity provision has*
35 *no duty to provide a defense for a claim against a public agency*
36 *for damages unless the damages are determined to be caused by*
37 *the negligence, recklessness, or willful misconduct of the design*
38 *professional.*

39 (d) *If there is an adjudication that the design professional*
40 *engaged in negligent, reckless, or willful misconduct, the design*

1 professional's duty to indemnify the public agency for damages
2 or liabilities, including the cost of providing a defense, caused by
3 the negligence, recklessness, or willful misconduct of the design
4 professional shall be proportionate to the actual liability of the
5 design professional.

6 (e) If a public agency elects to include an indemnity provision
7 in a request for proposal, an invitation to bid, or other solicitation
8 document as part of the procurement of the services of a design
9 professional, the indemnity language of the contract shall only be
10 enforceable if the language is in compliance with this section.

11 (e)

12 (f) (1) This section shall only apply to a professional service
13 contract, or any amendment thereto, entered into on or after January
14 1, 2007.

15 (2) The amendments made to this section by the bill amending
16 this subdivision shall only apply to a professional service contract,
17 or any amendment thereto, entered into on or after January 1,
18 2011.

19 SECTION 1. ~~Section 2782.85 is added to the Civil Code, to~~
20 ~~read:~~

21 2782.85. (a) ~~Notwithstanding subdivision (d) of Section 2778,~~
22 ~~for all contracts, and amendments to contracts, entered into on or~~
23 ~~after January 1, 2011, with a public agency for design professional~~
24 ~~services, all provisions, clauses, covenants, and agreements~~
25 ~~contained in, collateral to, or affecting these contracts or~~
26 ~~amendments to contracts that purport to require an immediate~~
27 ~~defense under an indemnity agreement are unenforceable, except~~
28 ~~as provided for in subdivisions (c), (d), and (e). This section shall~~
29 ~~not be waived or modified by contractual agreement, act, or~~
30 ~~omission of the parties. Contractual provisions, clauses, covenants,~~
31 ~~or agreements not expressly prohibited by this section are reserved~~
32 ~~to the agreement of the parties.~~

33 (b) ~~For purposes of this section, the following definitions apply:~~

34 (1) ~~"Design professional" includes all of the following:~~

35 (A) ~~An individual licensed as an architect pursuant to Chapter~~
36 ~~3 (commencing with Section 5500) of Division 3 of the Business~~
37 ~~and Professions Code, and a business entity offering architectural~~
38 ~~services in accordance with that chapter.~~

39 (B) ~~An individual licensed as a landscape architect pursuant to~~
40 ~~Chapter 3.5 (commencing with Section 5615) of Division 3 of the~~

1 ~~Business and Professions Code, and a business entity offering~~
2 ~~landscape architectural services in accordance with that chapter.~~

3 ~~(C) An individual registered as a professional engineer pursuant~~
4 ~~to Chapter 7 (commencing with Section 6700) of Division 3 of~~
5 ~~the Business and Professions Code, and a business entity offering~~
6 ~~professional engineering services in accordance with that chapter.~~

7 ~~(D) An individual licensed as a professional land surveyor~~
8 ~~pursuant to Chapter 15 (commencing with Section 8700) of~~
9 ~~Division 3 of the Business and Professions Code, and a business~~
10 ~~entity offering professional land surveying services in accordance~~
11 ~~with that chapter.~~

12 ~~(2) "Design professional services" includes all contractual~~
13 ~~services offered or performed by a design professional.~~

14 ~~(3) "Public agency" includes any county, city, city and county,~~
15 ~~district, school district, public authority, municipal corporation,~~
16 ~~or other political subdivision, joint powers authority, or public~~
17 ~~corporation in the state. Public agency does not include the State~~
18 ~~of California.~~

19 ~~(e) A design professional shall owe no defense or indemnity~~
20 ~~obligation to the indemnified party for a claim of liability unless~~
21 ~~and until the indemnified party provides a written tender of the~~
22 ~~claim or a portion of the claim to the design professional. That~~
23 ~~written tender shall include all of the information provided to the~~
24 ~~indemnified party by a claimant or claimants relating to claims~~
25 ~~caused by the design professional's services, and shall have the~~
26 ~~same force and effect as a notice of commencement of a legal~~
27 ~~proceeding. If an indemnified party tenders a claim subject to this~~
28 ~~section to a design professional in the manner specified in this~~
29 ~~subdivision, the design professional shall elect to perform either~~
30 ~~of the following, the performance of which shall be deemed to~~
31 ~~satisfy the design professional's defense obligation to the~~
32 ~~indemnified party:~~

33 ~~(1) Defend the claim with counsel chosen by the design~~
34 ~~professional. If a design professional elects to defend the claim~~
35 ~~pursuant to this paragraph, the design professional shall maintain~~
36 ~~control of the defense for any claim or portion of the claim to~~
37 ~~which the defense obligation applies. The design professional shall~~
38 ~~provide written notice of its election to the indemnified party within~~
39 ~~90 days after receipt of the written tender. The defense by the~~
40 ~~design professional shall be a complete defense of the indemnified~~

1 party of all claims or portions of claims alleged to have been caused
2 by the design professional.

3 (2) Pay, within 30 days after receipt of an invoice from the
4 indemnified party, no more than a reasonable allocated share of
5 the indemnified party's defense fees and costs, on an ongoing basis
6 during the pendency of the claim, subject to reallocation consistent
7 with this section, and including any amounts reallocated upon final
8 resolution of the claim, either by settlement or judgment. The
9 indemnified party shall allocate a share to itself to the extent a
10 claim or claims are alleged to be caused by its work, actions, or
11 omissions, and a share to each design professional to the extent a
12 claim or claims are alleged to have been caused by the design
13 professional's work, actions, or omissions, and shall allocate a
14 share to all other parties or entities, whether or not a contractual
15 party, who the indemnified party believes are potentially liable for
16 the claim or claims, regardless of whether the indemnified party
17 tenders the claim to any particular design professional, and
18 regardless of whether that professional is participating in the
19 defense. Any amounts not collected from any particular design
20 professional shall not be collected from any other design
21 professional.

22 (d) Notwithstanding any other law, if a design professional fails
23 to timely and adequately perform its obligations under paragraph
24 (1) or (2) of subdivision (c), the indemnified party shall have the
25 right to pursue a claim against the design professional for any
26 resulting damages, as well as for interest on defense and indemnity
27 costs, from the date incurred, at the rate set forth in subdivision
28 (g) of Section 3260, and for the indemnified party's reasonable
29 attorney's fees incurred to recover these amounts. The indemnified
30 party shall bear the burden of proof to establish both the design
31 professional's failure to meet the requirements of paragraph (1)
32 or (2) of subdivision (c) and any resulting damages.

33 (e) A public agency, private entity, or design professional shall
34 have the right to seek equitable indemnity for any claim governed
35 by this section.

36 (f) Nothing in this section shall prohibit the parties from
37 mutually agreeing to reasonable contractual provisions for damages
38 if any party fails to elect for or perform its obligations as stated in
39 this section.

- 1 ~~(g) Nothing in this section limits, restricts, or prohibits the right~~
- 2 ~~of the indemnified party or the design professional to seek equitable~~
- 3 ~~indemnification against any entity other than the indemnified party~~
- 4 ~~or design professional.~~
- 5 ~~(h) This section shall not apply to claims that are the subject of~~
- 6 ~~subdivisions (c) to (h), inclusive, of Section 2782.~~

[DATE]

The Honorable Lois Wolk
California State Senate, District 5
State Capitol Building, Room 4032
Sacramento, CA 95814
Via Fax: (916) 323-2304

RE: SB 972 (Wolk). Indemnification. Design Professionals. (As amended April 5, 2010)
Notice of Opposition

Dear Senator Wolk:

This letter is to inform you that the City of [YOUR CITY] respectfully opposes Senate Bill (SB) 972 because it would restrict a city's ability to contract with design professionals and would ultimately result in additional litigations and increased costs to the public.

SB 972 would limit the flexibility of public agencies to negotiate professional service agreements that reflect the particular risks of each project and the relative capacities and capabilities of different architects and engineers. California public agencies face substantial challenges in their efforts to maintain and expand infrastructure for education, transportation, water, environmental protection, and health care. In order to develop infrastructure projects, most public agencies engage architecture and engineering (A/E) consulting firms to provide professional services, such as planning and drafting plans and specifications. The written contract between the public agency and the A/E consulting firm establishes the scope of services, the fee paid to the A/E consultant and allocates the risks associated with the particular project through some type of indemnity or "hold harmless" provision.

The nature, scope and magnitude of risks are unique to each public works project, whether it is a school, airport, street, bridge, city building, seaport, or hospital. The parties who are in the optimal position to fairly allocate the unique risks of a particular infrastructure project are the public agency and the A/E consultants with which it negotiates. These parties know the site conditions, the design program, the schedule and the capabilities and capacities of each party to effectively manage the project.

SB 972 would be detrimental to public agencies because in the typical lawsuit, it will result in refusal by the A/E consulting firm or its insurance carrier to provide a legal defense for the public agency prior to a full trial. Similarly, SB 972 could limit the public agency's benefits under any additional insured provisions in the A/E consulting firm's insurance policy.

SB 972 only serves to benefit A/E consulting firms and their insurance carriers at the expense of the public in two ways. First, the net effect would be to shift to taxpayers legal defense costs that should be borne to varying degrees by A/E consulting firms and their insurance carriers. Second, it would encourage protracted litigation because, as a practical matter, a formal finding of negligence or intentional misconduct will be a prerequisite for the public agency to receive indemnity from the A/E consulting firm or its insurance carrier.

The negotiation of terms between public agencies and A/E consulting firms should be left to the free-play of market forces. SB 972 would preclude negotiation of broader protection, even where the public agency is willing to pay extra for such protection.

Public agencies have ample choices for A/E services to deliver their projects. Under these circumstances, it is unnecessary for the Legislature to step in and forbid certain types of indemnity agreements. As with any contract terms, whether the amount of fee or indemnity, A/E consulting firms may always choose to withhold their agreement and do business elsewhere.

For these reasons, the City of [YOUR CITY] opposes this measure and thanks you for your review of our position.

Sincerely,
SIGNATURE
NAME
TITLE

cc: YOUR SENATOR
YOUR ASSEMBLY MEMBER
Committee Chair (check www.cacities.org/billsearch for current location), NAME, COMMITTEE
Senate Republican Caucus (Via fax: 916-445-3105)

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER 

DATE: JULY 1, 2010

**AGENDA ITEM
E-3**

JULY 7, 2010

**APPROVE PROPOSAL FROM HAMNER, JEWELL & ASSOCIATES FOR
CONTINUED WIP PROPERTY NEGOTIATION SUPPORT**

ITEM

Approve proposal for continued Waterline Intertie Property negotiations. [RECOMMEND APPROVE PROPOSAL].

BACKGROUND

On June 25, 2008, your Honorable Board authorized execution of a Task Order Agreement with Hamner-Jewell for the initiation of property negotiation services related to the Waterline Intertie Project. The amount of this initial Agreement was for an amount not to exceed twenty-thousand dollars (\$20,000.00). An additional ten thousand (\$10,000.00) was also authorized in July of last year. The firm has lead initial contacts with effected property owners; prepared right of entry documents to perform geotechnical investigations, prepared license agreements with both San Luis Obispo and Santa Barbara Counties for work related to the river crossing, researched title reports and prepared offer packages. All the work outlined in previous task orders has been completed. Attached is a proposal outlining the work to be preformed to complete the necessary right of way acquisition process for the waterline intertie project.

RECOMMENDATION

Staff recommends that your Honorable Board approve the proposal and direct staff to execute a Work Order with Hamner, Jewell & Associates in the amount of not to exceed forty-thousand dollars (\$40,000.00).

ATTACHMENT

- Hamner-Jewell Proposal
- Original Contract



HAMNER, JEWELL & ASSOCIATES

Government Real Estate Services

a division of Beacon Integrated Professional Resources, Inc.

Ventura County Office: 4476 Market Street, Suite 601, Ventura, California 93003

Tel: (805) 658-8844 Fax: (805) 658-8859

☒ **San Luis Obispo County Office: 340 James Way, Suite 150, Pismo Beach, California 93449**

Tel: (805) 773-1459 Fax: (805) 773-2418

Writer's e-mail address: ljewell@hamner-jewell.com

May 20, 2010

Michael LeBrun, Interim General Manager
Nipomo Community Services District
148 S. Wilson Street
Nipomo, CA 93444

via email only

Subject: Nipomo Community Services District—Waterline Intertie Project
Proposal for Right of Way Acquisition Services

Dear Mr. LeBrun,

As you are aware, you have asked us to proceed with preparing offers for the property owners from whom real estate interests will need to be acquired by the District in order to construct the planned Waterline Intertie Project. The properties involved include:

- **The County of Santa Barbara.** The County of Santa Barbara owns property and easements at the Santa Maria River. The District seeks to finalize a License Agreement with the County that will authorize the District's construction of the planned waterline within and across County property. Preliminary discussions have already occurred with the County and a basic format for a License Agreement has been generally agreed upon. Follow up is now necessary to complete the License.
- **North Preisker Ranch.** As the Wallace Group recently embarked upon completing legal descriptions for the necessary easement rights for the project, they identified a sliver parcel lying between the end of Blosser Road and the County of Santa Barbara parcel. It appears that an easement for flood control purposes was granted by this owner to Santa Barbara County, but because only an easement rather than a fee interest was granted, North Preisker Ranch still shows up as the owner of the underlying fee interest in this parcel, prompting a need to obtain an easement for the waterline across this parcel. We have obtained a title report and located contact information for North Preisker Ranch. Further follow up is required to either clear their interest or obtain an easement for the waterline across this sliver parcel.
- **Durley Estate.** Prior meetings have been held with the attorney for this property owner and with the tenant farmer who conducts farming operations on this property. Details about the farming operations, access, irrigation, and construction coordination needs have been shared with the District's project engineers for consideration as project construction plans have been finalized. Right of way acquisition will be required from this parcel. The acquisition

process will require obtaining an agreement and deed from the property owner estate by working with their attorney. Because the District proposes open trenching across this parcel, the District will also need to obtain an agreement with the tenant farmer to assure possessory rights and clearance of the right of way in advance of the District's project construction.

- **Biorn.** An easement will need to be obtained from this property owner for the project. Reaching agreement will require coordination with both a local owner and her out-of-area sister-in-law. Because this property is subject to a mining lease, there will also be required coordination with the mining company to obtain an adequate release or agreement that will assure no conflict between the mining company's rights and the planned District's project facilities. At the present time, we await confirmation from the project engineers to confirm exactly what additional easement width may be needed to restrict potential mining operations from harming the proposed District pipeline. If the easement is widened, as anticipated per the recent project team conference, the appraisal will need to be updated to match the revised project plans before we proceed with a purchase offer.
- **Linda Vista Farms.** Property rights to be obtained from this property for the District project include the purchase of a site for a tank and pump station, plus easements for subsurface waterlines, access, utilities, and temporary construction purposes. Because certain design refinements were made to project plans after the District obtained an appraisal on this property, an appraisal update will be necessary before we proceed with an offer presentation.
- **Garcia.** Easement rights will also be required from this property owner, who used to be a part of Linda Vista Farms. Now severed and under separate ownership, coordination will need to occur with this owner-farmer regarding crop harvest, irrigation, and access, as well as obtaining an easement deed to broaden the access and pipeline rights that the District already holds over a portion of this property.
- **Via Concha Well Site.** Additional easement rights are sought to expand this well site. No owner contacts have yet been made by our firm for this well site expansion, but we understand that the owner has been cooperative with the District in the past. This acquisition will require a title report, and appraisal (provided by others, not a part of this proposal), and the easement acquisition process.

To assist you with completing the necessary right of way acquisition process, we would finalize offer packages that would include an offer letter, Appraisal Summary Statement, proposed Right of Way Agreement, and Deed. These documents have been drafted and presented to you and your counsel for review and pre-approval. In general, we make every effort to meet personally with owners to present these offers once you authorize us to proceed. After offer presentation, we would handle follow up communications with owners and District staff while pursuing amicable agreement terms with each owner to finalize the right of way transfers and, in the event of any that do not culminate in mutually acceptable amicable agreements within the timelines allocated for the project, we would coordinate with you and the District's attorney in conjunction with any required

Necessity Hearing scheduling. We have a high success rate of obtaining mutually acceptable agreements and reaching such agreements on the District's behalf is our primary goal. We process all agreement documents for necessary approvals and coordinate escrows, title insurance, and assure deed acceptance and recordations.

For our work, we bill monthly in accordance with the terms and provisions of our current Time and Materials Fee Schedule, a copy of which is attached. For budgetary purposes, we suggest a budget allocation of **\$40,000** for the work described herein. This will cover up to approximately 275 hours of our HJA staff time over a maximum twelve month period. We would work closely with you, your staff and your project team to assure that we are investing our efforts in accordance with your needs and preferences. In any case where one is working with people rather than completing an independently controllable task, it is always difficult to speculate in advance the specific amount of time that may be required to complete our goals. Our efforts are largely impacted by the level of accessibility and responsiveness of the property owners from whom we seek agreement. Obviously, some will require much more time than others in coming to terms and finalizing documents required for the purposes of the project. We will bill only for time and expenses actually expended on the project's behalf, and will work closely with NCSD staff throughout the process to assure that you feel in control of the course, and thereby the cost, of our services.

As I believe you are aware, our firm has a Task Order Agreement for Professional Services with the District, under which you can issue a Task Order for this next phase of project work. If you have any questions or will require anything further in order to process this proposal for approval, please feel free to contact me at either (805) 773-1459 or ljewell@hamner-jewell.com.

We look forward to the opportunity to work further with you and assist the District in accomplishing this project.

Sincerely,

Lillian D. Jewell

Lillian D. Jewell

Att: 2010 Time and Materials Fee Schedule for Annual Contract Clients

HAMNER, JEWELL AND ASSOCIATES
a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2010
TIME AND MATERIALS FEE SCHEDULE
For Annual and Multi-Annual Professional Services Contract Clients

Managing Senior Associate	\$160 an hour
Legal Support	\$160 an hour*
Senior Associate II	\$145 an hour
Senior Associate I	\$120 an hour
Associates II	\$100 an hour
Associates I	\$ 90 an hour
Assistants	\$ 70 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days. Payments not received within said period will accrue interest at a rate of 10% per annum.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

Rates may be adjusted on January 1 of any year, with thirty days advance written notice.

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell and Associates does not, however, provide legal representation or counsel; we work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.

**Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444**

**TASK ORDER AGREEMENT FOR PROFESSIONAL SERVICES
HAMNER, JEWELL & ASSOCIATES**

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the Nipomo Community Services District, a Community Services District duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "NCSD" or "District") and Hamner, Jewell & Associates (herein referred to as "Consultant"), with reference to the following Recitals:

RECITALS

A. NCSD desires to retain professional property negotiation services on an on-call, as needed basis, to perform services identified in individual task orders ("Task Orders").

B. NCSD desires to engage Consultant to provide services by reason of its qualifications and experience in performing such services, and Consultant has offered to provide the required services through Task Orders on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVES. Bruce Buel, General Manager, at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. Lillian Jewell, at telephone number (805) 773-1459, is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

NCSD: Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444
Attn: Bruce Buel, General Manager
Facsimile: (805) 929-1133

CONSULTANT: Hamner, Jewell & Associates
340 James Way, Suite 150
Pismo Beach, CA 93449
Attn: Lillian Jewell
Facsimile: (805) 773-2418
Email: ljewell@hamner-jewell.com

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. TASK ORDERS.

A. Task Orders shall:

1. Describe the Scope of Services to be performed by Consultant;
2. Include Compensation Schedules for services including reimbursable expenses.
3. Include a "Not To Exceed Amount".
4. Be signed by the Consultant prior to execution by NCSD.

B. The terms and conditions of this Agreement are incorporated into individual Task Orders.

4. SCOPE OF SERVICES. Consultant agrees to provide the Services and submit deliverables to NCSD in accordance with the individual Task Orders and this Agreement, subject to the direction of NCSD as provided from time to time. Consultant represents and warrants that the Not To Exceed Amount represented in individual Task Orders will be sufficient to provide the Services and submit the deliverables Identified in individual Task Orders. In addition and prior to submitting monthly invoices, Consultant shall participate in at least one (1) phone conference with District General Manager and/or other District representative regarding Consultant's efforts.

5. TERM. Consultant shall commence performance within five (5) days of NCSD's Execution of Task Orders and unless otherwise directed in writing by NCSD or unless earlier terminated as provided in this Agreement, shall complete performance and make deliverable as provided in this Agreement and individual Task Orders.

6. COMPENSATION OF CONSULTANT.

A. Consultant will be paid for the Services provided to NCSD in accordance with the Schedule set forth in the Task Orders and subject to the Not to Exceed Amount.

B. Consultant shall submit invoices no more often than monthly for Services performed and Reimbursable Expenses incurred. Each invoice shall identify the person providing the service, the services performed, a report on the services performed that at a minimum summarizes the meetings and conferences attended by Consultant on behalf of the District, and the corresponding Task Order.

C. NCSD shall review each invoice submitted by Consultant to determine whether it accurately reflects the Services performed and Reimbursable Expenses incurred in compliance with the provisions of this Agreement and the Task Order. In the event no charges or expenses are disputed, the invoice shall be approved and paid within forty five (45) days of receipt of the invoice. In the event NCSD disputes any charge or expenses, it shall return the original invoice to Consultant for correction and resubmission, however, the undisputed amount shall be paid as indicated above.

D. NCSD shall not pay Consultant more than the Not-to-Exceed Amount referenced in individual Task Orders without the prior written authorization of the NCSD. In order for NCSD to increase the Not-To-Exceed Amount Consultant must timely, and prior to sixty percent (60%) completion of the services referenced in individual Task Orders, identify and document how circumstances beyond its reasonable control have increased the time and/or costs of performing the Services beyond the amounts identified in the Task Orders. The NCSD, in its sole discretion, may deny in part or in whole the request to increase the Not to Exceed Amount, modify the Scope of Services, or approve the increase in the Not to Exceed Amount.

E. Payment to Consultant shall be full compensation for all personnel, materials, supplies, and equipment used in carrying out the Services.

F. Payment of an invoice by NCSD shall not constitute acceptance of defective Services, and NCSD's failure to discover or object to any unsatisfactory Services or billing prior to payment will not constitute a waiver of NCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

G. NCSD may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect NCSD from loss, including costs and attorneys' fees, on account of (1) defective or deficient work product not remedied; (2) subsequently discovered errors in invoices previously paid; (3) claims filed or reasonable evidence indicating probable filing of a

claim or claims; (4) failure of Consultant to make payments properly to its employees or sub-consultants; or (5) Consultant's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Consultant is unlikely to achieve timely completion.

7. STATUS OF CONSULTANT.

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Consultant shall have no authority to bind NCSD in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against NCSD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by NCSD.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither NCSD, nor any elected or appointed boards, officers, officials, employees or agents of NCSD, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Consultant, nor any of Consultant's officers, employees, subcontractors, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to NCSD's employees. Consultant expressly waives any claim Consultant may have to any such rights.

8. PERFORMANCE STANDARDS.

A. Compliance with laws. Consultant shall (and shall cause its agents and sub-contractors), at its sole cost and expense, to comply with all State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services referenced in individual Task Orders, and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether NCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and NCSD. Except as provided above, any corrections to Consultant's Services which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at Consultant's expense.

B. Standard of Performance. Consultant represents that it has the skills, expertise, and licenses necessary to perform the Services required under this Agreement and subsequently executed Task Orders. Consultant shall perform all such Services in the manner and according to the standards observed by professionals experienced in providing Services identified in individual Task Orders. All documents and services of whatsoever nature that Consultant delivers to NCSD pursuant to this

Agreement and individual Task Orders shall conform to the standards of quality normally observed by professionals experienced in providing Services identified in individual Task Orders. Consultant shall promptly correct or revise any errors or omissions at NCSD's request without additional compensation. Licenses required to perform such services shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement

9. FAMILIARITY WITH SERVICES TO BE PERFORMED. By executing individual Task Orders, Consultant represents that Consultant (a) has thoroughly investigated and considered the Scope of Services referenced in Task Orders to be performed; (b) has carefully considered how the services should be performed; (c) fully understands the difficulties and restrictions attending performance of the services under this Agreement; and (d) that the "not to exceed amount" is adequate for the Services to be performed by Consultant.

10. TAXES. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

11. CONFLICT OF INTEREST. Consultant covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Consultant has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of NCSD for Task Order work or which would in any way hinder Consultant's performance of services under this Agreement or Task Order. Consultant further covenants that in the performance of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the prior express written consent of the NCSD Manager. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the NCSD in the performance of the Services pursuant to Individual Task Orders.

12. RESPONSIBILITIES OF NCSD. NCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

13. OWNERSHIP OF DOCUMENTS. All reports, documents, drawings, photographs, videotape, specifications, data, and other instruments of professional service, in paper and electronic form, whether in draft or final, prepared by Consultant during the performance of this Agreement (the "Documents") shall be and become the property of NCSD. Consultant shall deliver the Documents to the NCSD promptly upon completion of the Services or termination of this Agreement, for any reason, whichever shall occur first.

14. RECORDS, AUDIT AND REVIEW. Consultant and Consultant's subcontractors shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such

records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. NCSD shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

15. INDEMNIFICATION

A. To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the NCSD) indemnify and hold harmless NCSD and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in performing services pursuant to Task Orders. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement or completion of the services referenced in individual Task Orders under this Agreement shall release Consultant from its obligations referenced in subsection A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and individual Task Orders. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. NCSD's failure to monitor compliance with this requirement imposes no additional obligations on NCSD and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend NCSD as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in this Section 15. The obligations of this Section 15

shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. INSURANCE.

A. Consultant and its subconsultants shall procure and maintain insurance with companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage on an "occurrence basis", written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

General Liability Insurance	((ISO Form CG001 11/85)
(including coverage for premises, products and completed operations, independent Consultants/vendors, personal injury and contractual obligations with combined single limits of coverage of at least	
	\$ 1 Million per occurrence.
	\$ 2 Million in the aggregate
Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance or	\$ 1 Million per claim
Errors and Omissions Insurance	\$ 1 Million in the aggregate

B. If Consultant or its employees and agents will use personal automobiles in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. The General and Commercial Automobile liability policies shall be endorsed to include the following:

(1) NCSD, its officers, directors, employees and agents shall be named as Additional Insureds using ISO endorsement No. CG-2010; and

(2) The coverage afforded NCSD shall be primary and non-contributing with any other insurance maintained by NCSD.

(3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

D. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

E. Prior to commencing work under this Agreement, Consultant shall provide NCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for commercial general liability, automobile liability, workers' compensation, employer's liability, and professional liability insurance shall specify that the insurer shall give NCSD thirty (30) days advance written notice by the insurer prior to cancellation of the policy except ten (10) days for nonpayment of premium.

F. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this Agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

G. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against NCSD regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

H. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the NCSD or its operations limits the application of such insurance coverage.

I. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to NCSD and approved of in writing.

J. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

K. Consultant agrees to provide immediate notice to NCSD of any claim or loss against Consultant arising out of the work performed under this agreement. NCSD assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve NCSD.

17. PERSONNEL.

A. The Consultant represents that it has, or will secure at its own expense, all personnel, sub-consultants and/or subcontractors required in performing the Services under this Agreement. All of the Services required hereunder will be performed by the

Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such Services.

B. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's employees, associates and subconsultants assigned to perform the Services required under this Agreement.

18. TERMINATION.

A. If Consultant at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedule referenced in Task Orders, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without NCSD's written consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute the Services, or otherwise fails to perform fully any and all of the Agreements herein contained, Consultant shall be in default.

B. If Consultant fails to cure the default within seven (7) days after written notice thereof, NCSD may, at its sole option, take possession of any documents, files (including CAD and other electronic files), or other materials prepared or used by Consultant in connection with the Services and (a) provide any such services, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (b) terminate Consultant's right to proceed with the Services.

C. In the event NCSD elects to terminate this Agreement, NCSD shall have the right to immediate possession of all Documents and other work in progress prepared by or on behalf of Consultant, whether located at the District Office, at Consultant's place of business, or at the offices of a subcontractor, and may employ any other person or persons to provide the Services and provide the materials therefore. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Services are completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by NCSD in obtaining Services, such excess shall be paid by NCSD to Consultant, but, if such expense shall exceed such unpaid balance, then Consultant shall promptly pay to NCSD the amount by which the expenses exceeds the unpaid balance. The expense referred to in the last sentence shall include expenses incurred by NCSD in obtaining the Services from others, for attorneys' fees, and for any damages sustained by NCSD by reason of Consultant's default or defective Services.

D. In addition to the foregoing right to terminate for default, NCSD reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not to Exceed Amount referenced in Task Orders, which shall be calculated as follows: (1) Payment for any Services then satisfactorily completed and

accepted by NCSD, plus (2) Reimbursable Costs actually incurred by Consultant; plus (3) reasonable termination costs incurred by Consultant solely on account of the termination for convenience. There shall be deducted from such sums as provided in this section the amount of any payment made to Consultant prior to the date of termination of the Services. Consultant shall not be entitled to any claim or lien against NCSD or the proposed project for any additional compensation or damages in the event of such termination and payment. In addition, the NCSD's right to hold funds pursuant to Section 6 G shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by NCSD for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under Section D, above, and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

F. Should NCSD fail to pay Consultant undisputed payments set forth in Section 6 above, Consultant may, at Consultant's option, suspend its services if such failure is not remedied by NCSD within thirty (30) days of written notice to NCSD of such late payment.

19. BREACH OF LAW. In the event the Consultant or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or Consultant; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraphs 11, 23, 24, 25 of this Agreement; or for any other cause the NCSD determines to be so serious and compelling as to affect Consultant's responsibility as a public consultant or Consultant, including but not limited to, debarment by another governmental agency, then the NCSD reserves the unilateral right to terminate this Agreement, seek indemnification and/or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper.

20. DISPUTE RESOLUTION.

A. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be

submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

B. No claim, potential claim, dispute or controversy, except non-payment by NCSD of undisputed amounts, shall interfere with the progress and performance of the Services referenced in Task Orders, or any changes thereto, and Consultant shall proceed as directed by the NCSD in all instances with its Services, including any disputed Services, or any changes thereto and any failure of Consultant to proceed shall be deemed a material breach of this Agreement entitling NCSD to all remedies available under Section 19 or other provision of the Agreement and/or applicable law. Except as provided elsewhere in this Agreement, NCSD shall continue to make payments in accordance with the Agreement.

21. NCSD NOT OBLIGATED TO THIRD PARTIES. NCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

22. NON-DISCRIMINATION. Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

23. UNAUTHORIZED ALIENS. Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against NCSD for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse NCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by NCSD. Consultant shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

24. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than NCSD without prior written authorization from the District Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Legal Counsel of NCSD, voluntarily provide declarations, letters of support,

testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives NCSD notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then NCSD shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify NCSD should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there-under. NCSD retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

25. ASSIGNMENT. The expertise and experience of Consultant are material considerations for this Agreement. NCSD has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the District Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling NCSD to any and all remedies at law or in equity, including summary termination of this Agreement. NCSD acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

26. COSTS AND ATTORNEY'S FEES. Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

27. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

28. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

29. REMEDIES NOT EXCLUSIVE. Except for disputes related solely to the payment for Services performed by Consultant, no remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

30. NONEXCLUSIVE AGREEMENT. Consultant understands that this is not an exclusive Agreement and that NCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the NCSD desires.

31. ASSIGNMENT. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of NCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

32. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES. No officer or employee of NCSD will be personally liable to Consultant, in the event of any default or breach by the NCSD or for any amount that may become due to Consultant.

33. INTERPRETATION OF THIS AGREEMENT. The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

34. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

35. NO WAIVER OF DEFAULT. No delay or omission of NCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to NCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of NCSD.

36. ENTIRE AGREEMENT AND AGREEMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and Agreement of the parties and there have been no promises, representations, Agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral Agreements, course of conduct, waiver or estoppel.

37. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

38. CALIFORNIA LAW. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

39. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.


40. PRECEDENCE. In the event of a conflict between the Task Orders and this Agreement, the provisions of this Agreement shall control.

41. RECITALS. Recitals A through B are incorporated herein by reference as though set forth at length.

42. AUTHORITY TO EXECUTE. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Consultant is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the NCSD.

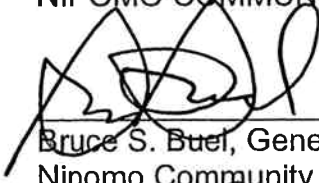
CONSULTANT: Hamner, Jewell and Associates

By: 
Name: Lillian Jewell
Title: President

Beacon Integrated Professional Resources, Inc
dba Hamner, Jewell & Associates


Date: July 16, 2008

NIPOMO COMMUNITY SERVICES DISTRICT


Bruce S. Buel, General Manager
Nipomo Community Service District

Date: July 18, 2008

ATTEST:


Donna K. Johnson, Secretary
to the Board of Directors
Date: 7-18-08

T:\DISTRICT PROJECTS\ENGINEERING\HAMNER JEWELL\TASK ORDER AGREEMENT.DOC

TASK ORDER
to
CONSULTANT SERVICES AGREEMENT
Between
NIPOMO COMMUNITY SERVICES DISTRICT
and HAMNER, JEWELL & ASSOCIATES

Dated: July 1, 2008

TASK ORDER # 08-001

AUTHORIZATION FOR SERVICES:

At the request of the Nipomo Community Services District, Hamner, Jewell & Associates is to provide the services as described herein. The terms and conditions of the Agreement for Professional Services, dated July 1, 2008, are incorporated herein by this reference. The scope of services requested, along with a schedule of fees and reimbursable for said services and the Not to Exceed Amount, are set forth below as follows:

SERVICES TO BE PERFORMED (Additional information may be attached as an exhibit.):

Attached as Exhibit "A"

SCHEDULE OF FEES (HOURLY RATES) INCLUDING REIMBURSABLE EXPENSES

(Additional information may be attached as an exhibit.):

Time and Materials as set forth in Exhibit A with a not to exceed expenditure limit of twenty thousand dollars (\$20,000)

} Total

SCHEDULE OF SERVICES (Additional information may be attached as an Exhibit.):

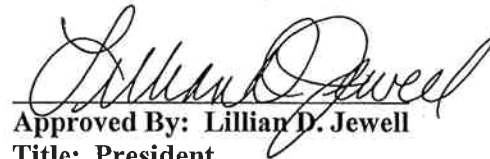
See Exhibit "A"

NIPOMO COMMUNITY SERVICES
DISTRICT



Approved By: Bruce Buel
Title: General Manager

HAMNER, JEWELL &
ASSOCIATES



Approved By: Lillian D. Jewell
Title: President
Beacon Integrated Professional Resources, Inc
dba Hamner, Jewell & Associates

Date: 7/18/08

Date: 7/17/08



HAMNER, JEWELL AND ASSOCIATES

a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2008

TIME AND MATERIALS FEE SCHEDULE

For Annual and Multi-Annual Professional Services Contract Clients

Managing Senior Associate	\$150 an hour
Legal Support	\$150 an hour*
Senior Associate II	\$140 an hour
Senior Associate I	\$110 an hour
Associates II	\$ 90 an hour
Associates I	\$ 80 an hour
Assistants	\$ 70 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days. Payments not received within said period will accrue interest at a rate of 10% per annum.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

Rates may be adjusted quarterly, with thirty days advance written notice.

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell and Associates does not, however, provide legal representation or counsel; We work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.



HAMNER, JEWELL & ASSOCIATES

Government Real Estate Services

a division of Beacon Integrated Professional Resources, Inc.

Ventura County Office: 3639 Harbor Boulevard, Suite 210, Ventura, California 93001
Tel: (805) 658-8844 Fax: (805) 658-8859

☒ San Luis Obispo County Office: 340 James Way, Suite 150, Pismo Beach, California 93449
Tel: (805) 773-1459 Fax: (805) 773-2418

Writer's e-mail address: ljewell@hamner-jewell.com

June 23, 2008

Bruce Buel, General Manager
Nipomo Community Services District
148 S. Wilson Street
Nipomo, CA 93444

Subject: Nipomo Community Services District—Waterline Intertie Project
Proposal for Right of Way Acquisition Services

Dear Bruce,

Thank you for contacting my firm to solicit our assistance in acquiring property rights in conjunction with the Nipomo Community Services District's Waterline Intertie Project. As we have discussed, I would be pleased to have our firm assist you with these efforts.

As you are aware, Hamner, Jewell & Associates specializes in acquiring right of way and other property rights in conformance with the provisions of the California Government Code and eminent domain laws. Since 1977, we have assisted public agencies throughout Ventura, Santa Barbara, and San Luis Obispo counties with acquiring right of way and other property interests for roadways, waterlines, sewerlines, lift stations, pump stations, water treatment plants, and various other types of public projects. We are highly experienced in acquiring right of way specifically for waterline projects, both large and small. We have handled all of the right of way acquisition work for the Central Coast Water Authority and Calleguas Municipal Water District for many years, and have also recently completed the right of way acquisition for the Nacimiento Water Project. We are therefore very experienced and capable of assisting you with the property acquisition aspects of your pending project.

From our conversation, it is my understanding that that you seek our assistance with acquiring property rights for waterline easements, temporary construction easements, and a pump station and storage reservoir for the subject Intertie Project. You have indicated that these rights will need to be acquired from six property ownerships, and that you have had communications with each owner to date so that they are aware of the proposed project. You further indicated that the District would be directly retaining an appraiser, will obtain title reports, and will provide us with legal descriptions of the easements to be acquired, along with a set of project plans. You will provide us with appraisals and legal descriptions for use in our work in acquiring the sought property rights for the project.

EXHIBIT A

We would pursue the right of way acquisition process on the District's behalf in accordance with Government Code and eminent domain requirements. Our work would include the preparation of offer packages based upon the appraisals. Our offer packages will include an offer letter, Appraisal Summary Statement, proposed Right of Way Agreement, and Deed. These documents would be presented to you for your review and pre-approval prior to presenting offers to property owners. In general, we make every effort to meet personally with owners to present these offers. After offer presentation, we would handle follow up communications with owners and District staff while pursuing amicable agreement terms with each owner to finalize the right of way transfers and, in the event of any that do not culminate in mutually acceptable amicable agreements, we could coordinate with you and the District's attorney in conjunction with any required Necessity Hearing scheduling. We have a high success rate of obtaining mutually acceptable agreements. For all cases that result in agreements, we would process all documents for necessary approvals and coordinate escrows, title insurance, and assure closings.

To assist you with these services, we would propose to bill monthly in accordance with the terms and provisions of our current Time and Materials Fee Schedule, a copy of which is attached. We would work closely with you and your project team to assure that we are investing our efforts in accordance with your needs and preferences. In any case where one is working with people rather than completing an independently controllable task, it is always difficult to speculate in advance the specific amount of time that may be required to complete our goals. Our efforts are largely impacted by the level of accessibility and responsiveness of the property owners from whom we seek agreement. Obviously, some will require much more time than others in coming to terms and finalizing documents required for the purposes of the project. We will bill only for time and expenses actually expended on the project's behalf, in accordance with the provisions of our attached Fee Schedule. For budgetary purposes for the six acquisitions expected to be needed for this project, we suggest that a budget sufficient to cover an average of 50 hours per parcel of Hamner, Jewell & Associates staff time, plus approximately \$1,500 for reimbursable expenses such as mileage, postage, and special delivery charges be allocated for this work. Hamner, Jewell & Associates offers two rate schedule options. If you wish to retain us on an annual on-call professional services contract, we offer a reduced rate schedule to our annual, ongoing clients. This is the approach I would recommend for the District. Project-specific contracts are at our standard Project-based rates; I have attached our Project-based rate schedule as well so that you can compare the difference and decide which contract approach to use. If you have any questions about these rate schedule options, please feel free to call on me.

We realize that time is of the essence to you and your project and we are prepared to assist you in this effort at the present time. If you have any questions or will require anything further in order to retain us to assist you with these efforts, please contact me at either (805) 773-1459 or ljewell@hamner-jewell.com.

We would look forward to the opportunity to work with you again and to assist you and the District with this project!

Sincerely,

Lillian D. Jewell

Lillian D. Jewell

Att: 2008 Time and Materials Fee Schedules for Annual Contract and Project-based Work

EXHIBIT A

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER



DATE: JULY 1, 2006

AGENDA ITEM

E-4

JULY 7, 2010

APPOINT DISTRICT REPRESENTATIVE TO ATTEND COUNTY MEETINGS

ITEM

Appoint District representatives to attend the July 13th Board of Supervisor's meeting regarding the District's Sphere of Influence Memorandum Of Agreement and to attend the July 15th Local Agency Formation Commission (LAFCO) meeting regarding the adoption of the agreement [APPOINT DISTRICT REPRESENTATIVE].

BACKGROUND

The Board recently approved the District's Sphere of Influence Memorandum Of Agreement. The agreement is scheduled to be considered at the July 13th Board of Supervisor's meeting and the July 15th LAFCO meeting. The General Manager would usually attend the meetings to represent the District. However, due to a scheduling conflict the General Manager will be out of the office and unable to attend.

RECOMMENDATION

Staff recommends that the Board appoint a District representatives to attend the July 13th Board of Supervisor's meeting and the July 15th Local Agency Formation Commission meeting regarding the adoption of the Sphere of Influence Memorandum of Agreement.

TO: BOARD OF DIRECTORS

FROM: DON SAPGNOL.O
GENERAL MANAGER



DATE: JULY 1, 2010

AGENDA ITEM

F

JULY 7, 2010

MANAGER'S REPORT

ITEM

Standing report to your Honorable Board -- *Period covered by this report is June 17, 2010 through July 1, 2010.*

DISTRICT BUSINESS

Administrative

- The NMMA annual report has been completed and submitted to the court.
- 2010 Urban Water Management Plan administrative draft will be delivered on July 7th.
- Recruitment for a Maintenance Supervisor will start in August.
- The GM will be out of the office during the week of July 12th returning on July 19th.

Operations

- Storage Tank Re-habilitation project is approximately 50% complete.
- Security system installation at the Stand Pipe site is complete and connected to the SCADA system.
- Willow Road Waterline project is underway. Staff is reviewing material submittals.
- Via Concha well rehab is 90% complete.
- Maria Vista Estates has set a total of ten water meters.

Meetings

Significant meetings attended or scheduled:

- July 7 – Water Resource Advisory Committee.
- July 8 - NMMA Technical Group meeting with NCMA.
- July 12 – Southland Waste Water Treatment Plant Committee.
- July 13 – Board of Supervisors to consider District's SOI.
- July 15 – LAFCO hearing to approve District's SOI.
- July 19 – NMMA Technical Group.
- July 26 – Waterline Intertie Project Committee.

Safety Program

- No incidents or accidents to report.

RECOMMENDATION

Staff seeks direction and input from your Honorable Board.